

1 HONORABLE ROBERT S. LASNIK  
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10 UNITED STATES DISTRICT COURT  
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WESTERN DISTRICT OF WASHINGTON

THE SIGN POST, INC., a Washington  
corporation,

Plaintiff,  
vs.

BOB'S BURGER AND BREW OF  
WASHINGTON, LLC, B3 BIRCH BAY,  
L.L.C., YAKIMA BOB'S BURGERS &  
BREW LLC, each a Washington limited  
liability company; RICK KILDALL, BOB  
KILDALL, CODY HURLBURT, and JEFF  
ROBERTS, each an individual.

Defendants.

NO. CV09-1420-RSL

**FIRST AMENDED COMPLAINT FOR  
COPYRIGHT INFRINGEMENT**

**JURY TRIAL DEMANDED**

The Sign Post, Inc. alleges for its Complaint as follows:

**I. NATURE OF THE CASE**

1.1. This is an action for copyright infringement.

1.2. Plaintiff The Sign Post, Inc. ("TSP"), designs and sells copyrighted designs used  
to manufacture signage. Defendants Bob's Burger and Brew of Washington, LLC ("BBB"), B3  
Birch Bay, L.L.C. ("*Birch Bay Bob's*"), Yakima Bob's Burgers and Brew LLC ("*Yakima  
Bob's*"), Rick Kildall, and Bob Kildall (the "*Kildalls*"), Cody Hurlburt ("*Hurlburt*") and Jeff  
Roberts ("*Roberts*") (collectively "**Defendants**") willfully infringed TSP's copyrights, by

1 copying, displaying, creating derivative works based on, and otherwise exploiting copies of  
2 TSP's copyrighted designs without authorization from TSP. As the registered copyright holder,  
3 TSP brings this lawsuit to enjoin Defendants from further committing copyright infringement  
4 and to recover damages from Defendants' exploitation thereof.

5 **II. JURISDICTION AND VENUE**

6 2.1. This Court has original subject matter jurisdiction over this action pursuant to 28  
7 U.S.C. §§ 1331 and 1338(a) because this is an action for copyright infringement arising under  
8 the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*

9 2.2. This Court has personal jurisdiction over Defendants because all of the limited  
10 liability company Defendants maintain their principal place of business in the State of  
11 Washington, and the individual defendants are all residents of the State of Washington.

12 2.3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) because  
13 TSP resides in this judicial district and because the damage suffered by TSP occurred in this  
14 judicial district. Venue is also proper under 28 U.S.C. § 1400(a) because Defendants have  
15 engaged in infringing activities within this judicial district.

16 **III. PARTIES**

17 3.1. Plaintiff TSP is a business incorporated in the State of Washington having its  
18 principal place of business in Bellingham, Washington. TSP is one of the preeminent designers  
19 and manufacturers of signage and displays in Washington State.

20 3.2. Defendant BBB is a Washington limited liability company having its principal  
21 place of business in Lynden, Washington. BBB directly operates a number of "Bob's Burger &  
22 Brew" restaurants in the State of Washington, and has franchise agreements with the operators of  
23 other "Bob's Burger and Brew" restaurants.

24 3.3. Defendants Rick and Bob Kildall are individuals domiciled in Bellingham,  
25 Washington. Both are BBB members and personally and materially participated in the  
26 infringements alleged herein. Defendant Bob Kildall is also a Yakima Bob's member.

27 3.4. Defendant Birch Bay Bob's is a Washington limited liability company having its

1 principal place of business in Custer, Washington. Birch Bay Bob's operates a "Bob's Burger  
 2 and Brew" restaurant pursuant to a franchise agreement with BBB.

3 3.5. Defendant Cody Hurlburt is a Birch Bay Bob's member and personally and  
 4 materially participated in the infringements alleged herein.

5 3.6. Defendant Yakima Bob's is a Washington limited liability company having its  
 6 principal place of business in Yakima, Washington. Yakima Bob's operates a "Bob's Burger  
 7 and Brew" restaurant pursuant to a franchise agreement with BBB.

8 3.7. Defendant Jeff Roberts is a Yakima Bob's member and personally and materially  
 9 participated in the infringements alleged herein.

10 **IV. FACTS**

11 **Ownership of the Copyrighted Works.**

12 4.1. TSP is, and at all times relevant to the matters alleged in this Complaint was,  
 13 engaged in the business of branding and designing identities, and designing, fabricating,  
 14 installing, and maintaining signage and displays based on such branding and identities. As part  
 15 of the creation of its signs and displays, TSP develops an overall look for a brand, and produces  
 16 original artwork and designs which are used to manufacture the signage and displays which  
 17 reflect the brand. TSP takes substantial efforts to perfect and protect its artwork and designs,  
 18 which artwork and designs constitute TSP's valuable intellectual property.

19 4.2. As discussed more fully *infra*, as part of a rebranding effort for Bob's, TSP  
 20 created artwork (the "**Works**") to be used to manufacture signage for Defendant BBB. TSP  
 21 obtained copyright registrations for the Works, namely, the following four registrations:

<b>Title of Work</b>	<b>Reg. Number</b>	<b>Reg. Date</b>
"Bob's Burgers & Brew"	VA0001411183	June 7, 2007
"Bob's Burgers & Brew": pole sign	VA0001418255	June 7, 2007
"Bob's Burgers & Brew": freeway sign	VA0001418256	June 7, 2007
"Bob's Burgers & Brew": entry sign	VA0001418257	June 7, 2007

1       4.3.    TSP is the sole and exclusive owner of all copyrights for the Works.

2 **Defendants' Acts of Infringement**

3       4.4.    Beginning in 2002, as part of BBB's rebranding efforts, TSP produced the Works.

4 Copies of the Works are attached as **Exhibit A** hereto. TSP produced the Works in order to

5 manufacture signage for various BBB locations, commencing with Cook Road in Burlington,

6 Washington. As set forth *supra* in Paragraph 4.2, TSP applied for, and was granted, copyright

7 registrations in these designs by the United States Copyright Office. Subsequently, TSP

8 produced signage for various BBB locations, using the copyright-protected designs it had

9 created.

10       4.5.    When TSP created the Works and signage for BBB, it did not transfer any

11 copyright rights in the designs and artwork to BBB. The parties never contemplated such an

12 agreement, and no such agreement exists. Consequently, TSP is the author of the copyrights in

13 the designs and has exclusive ownership therein.

14       4.6.    However, starting with the "Bob's Burger and Brew" Railroad Avenue location in

15 Bellingham, Washington, Defendants utilized different sign companies to fabricate signage for

16 the restaurants using the Works, but failed to obtain TSP's authorization to use the Works.

17 Defendants had signage produced by other companies using the Works and installed those signs

18 at the Bellingham, Washington (Railroad Avenue) restaurant location, and, later, at the Blaine,

19 Washington (Birch Bay Square), Lynden, Washington, and Yakima, Washington locations.

20 BBB and the Kildalls had the implied or express authority to make decisions regarding signage

21 at these locations. The signage at these locations was produced pursuant to their direction and

22 control. Prior to production of the signage at these locations, TSP advised BBB that BBB did

23 not have a license to utilize the Works.

24       4.7.    In May 2007, TSP provided a bid for signage at the Blaine, Washington location

25 operated by Birch Bay Bob's and owned by Cody Hurlburt. Bob Kildall informed TSP that

26 TSP's bid was not accepted, and that another sign company would be used. TSP informed Bob

27 Kildall that TSP owned the copyrights in the Works and that they could not be used to produce

1 the new signage. Despite this, BBB, the Kildalls, Birch Bay Bob's and Cody Hurlburt directed  
 2 Custom Design, Inc. ("CDI"), a third-party sign company, to manufacture the signage based on  
 3 the Works.

4 4.8. In April 2008, BBB and the Kildalls directed CDI to manufacture signage for the  
 5 Lynden location based on the Works.

6 4.9. In June 2009, Defendants contacted TSP to request a bid for signage for the  
 7 restaurant location in Yakima, Washington. Defendants planned to have new signage fabricated  
 8 using the Works. On July 16, 2009, Jeff Roberts sent an email message to Ken Dennis of TSP,  
 9 informing Mr. Dennis that TSP's bid had been rejected and that another sign company would be  
 10 used to create the signage at the Yakima location. On July 21, 2009, Mr. Dennis sent an email in  
 11 response, informing Roberts that TSP was the owner of the copyrights in the Works, and that any  
 12 unauthorized use of the Works by Defendants would constitute an infringement of TSP's  
 13 copyrights. Later that day, Defendant Rick Kildall replied to Mr. Dennis via email, informing  
 14 Mr. Dennis that BBB was the owner of certain trademarks related to the restaurants.

15 4.10. Subsequent to these communications among Defendants and TSP, BBB, the  
 16 Kildalls, Yakima Bob's and Jeff Roberts directed Eagle Signs LLC ("Eagle"), a third-party sign  
 17 company, to create signage for the Yakima location based on the Works. Defendants' infringing  
 18 acts as to the signage at the above locations was willful.

19 4.11. To this day, Defendants continue to utilize signage created using the Works at  
 20 their Railroad Avenue location in Bellingham, at Birch Bay Square in Blaine, at Lynden and at  
 21 the Yakima location.

22 4.12. TSP has never granted Defendants any license in or to the Works.

23 4.13. Defendants knew that they did not have any rights in and to the Works and that  
 24 they were not entitled to exploit the Works.

25 4.14. By copying the Works, providing the Works to CDI and Eagle, and directing CDI  
 26 and Eagle to manufacture and install signage at the Birch Bay Square, Lynden and Yakima  
 27 restaurants, Defendants have infringed TSP's exclusive rights in the Works.

1           **Damage to TSP**

2           4.15. Defendants' acts as described above constitute copyright infringement, and they  
 3 have deprived and continue to deprive TSP of revenues to which it would otherwise be entitled.  
 4 Moreover, Defendants' acts deprive TSP, as sole copyright holder, of the right to control the  
 5 publication, display, distribution, creation of derivative works based on, and sale of the Works.

6           4.16. The natural, probable, and foreseeable result of Defendants' wrongful conduct has  
 7 been, and will continue to be, to deprive TSP of the benefits of licensing the works to an  
 8 authorized party, and to deprive TSP of goodwill, and to injure its reputation and control over the  
 9 Works.

10          4.17. As a direct and proximate result of the acts of the Defendants, TSP has already  
 11 suffered irreparable damage and has sustained lost profits. TSP has no adequate remedy at law  
 12 to redress all of the injuries that Defendants have caused and intend to cause by their conduct.  
 13 TSP will continue to suffer irreparable harm and sustain lost profits until Defendants' actions are  
 14 enjoined by this Court.

15           **V. TSP'S CAUSE OF ACTION – COPYRIGHT INFRINGEMENT**

16          5.1. Plaintiff incorporates the allegations set forth in paragraphs 1.1 through 4.15  
 17 above as though fully set forth herein.

18          5.2. TSP owns all rights, title, and interest in and to the Works, including all exclusive  
 19 rights in copyright.

20          5.3. TSP is the registered copyright holder of the exclusive rights in the Works with  
 21 the United States Copyright Office.

22          5.4. TSP never granted Defendants any rights in or to the Works. Nonetheless,  
 23 Defendants copied, and/or caused others to copy, the Works and displayed the Works in signage  
 24 without the authorization of TSP.

25          5.5. By their actions as alleged above, Defendants have infringed and will continue to  
 26 infringe on TSP's copyrights in and relating to the Works by copying and displaying the Works.  
 27 See 17 U.S.C. § 106.

5.6. Further, by their actions as alleged above, Defendants have infringed and will continue to infringe on TSP's exclusive right to create derivative works of the Works.

5.7. TSP is entitled to an injunction restraining Defendants and their agents and employees, and all persons working in concert with them, from engaging in any further such acts in violation of the copyright laws.

5.8. TSP is further entitled to recover from Defendants the damages, including attorneys fees, it has sustained and will sustain, and any gains, profits, and advantages obtained by Defendants, as a result of Defendants' acts of infringement alleged above. At present, TSP cannot fully ascertain the amount of such damages, gains, profits, and advantages.

5.9. TSP is further entitled to statutory damages for Defendants' willful infringement of TSP's copyrights in the Works. TSP advised Defendants on numerous occasions that TSP owned the copyrights in the Works, and that Defendants had no right to use these designs. Defendants clearly had notice of TSP's rights. Defendants' infringements were therefore willful, given Defendants' decision to proceed despite TSP having notified Defendants of TSP's rights.

## VI. RELIEF REQUESTED

WHEREFORE, Plaintiff TSP prays for the following relief:

1. That this Court find that Defendants have infringed on TSP's copyrights in the Works.

2. That the Defendants, and their agents, joint venturers, servants, employees, and all other persons in active concert or privity or in participation with them, be enjoined from directly or indirectly infringing on TSP's rights in the Works.

3. That Defendants be required to file with the Court and to serve on TSP, within thirty (30) days after service of the Court's order as herein prayed, a report in writing under oath setting forth in detail each and every instance in which Defendants have used the Works.

5. That Defendants be required to file with the Court and to serve on TSP, within thirty (30) days after service of the Court's order as herein prayed, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the Court's

1 order.

2 6. That Defendants be required to file with the Court and to serve on TSP, within  
3 thirty (30) days after service of the Court's order as herein prayed, a report in writing under oath  
4 setting forth in detail each sale, distribution, reproduction, public display, marketing, license,  
5 lease, transfer, advertisement, or development of any works derived or copied from the Works.

6 7. That Defendants be required to account for all gains, profits, and advantages  
7 derived from their acts of infringement, including the provision of an accounting of revenue or  
8 other consideration generated from the sale, distribution, reproduction, public display, marketing,  
9 license, lease, transfer, of the Works.

10 8. That all gains, profits, and advantages derived by Defendants from their acts of  
11 infringement and other violations of law be deemed to be held in constructive trust for the benefit  
12 of TSP.

13 9. That the infringing items be impounded and destroyed pursuant to 17 U.S.C. §  
14 503.

15 10. That judgment be entered for TSP and against Defendants for TSP's actual  
16 damages according to proof, and for any profits attributable to infringements of TSP's copyrights  
17 in accordance with proof pursuant to 17 U.S.C. § 504(c), or, in the alternative, that judgment be  
18 entered for TSP and against Defendants for statutory damages resulting from Defendants' willful  
19 infringement of the copyrights in the Works pursuant to 17 U.S.C. § 504(c).

20 11. That TSP have judgment against Defendants for TSP's costs and attorneys' fees  
21 pursuant to 17 U.S.C. § 505.

22 12. That the Court grant such other, further, and different relief as the Court deems  
23 proper under the circumstances.

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1 DATED this 17<sup>th</sup> day of June, 2010.

Respectfully Submitted,

2 **FOCAL PLLC**

3 /s/Venkat Balasubramani

4 Venkat Balasubramani, WSBA #28269

5 Sean M. McChesney, WSBA #36973

6 Attorneys for Plaintiff

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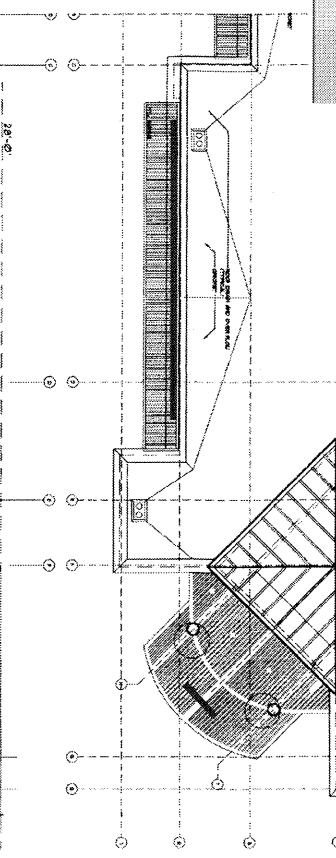
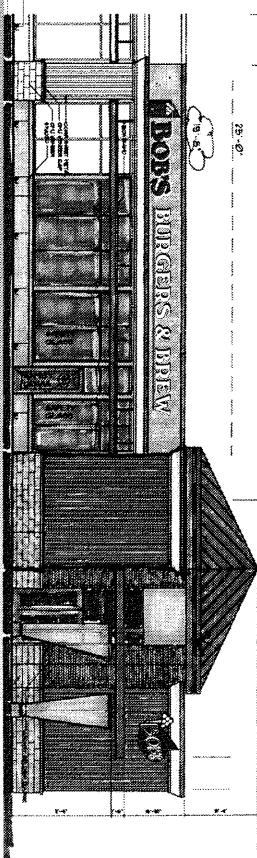
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JOB TITLE BOB'S BURGERS & FRIES  
 FILE front  
 SCALE 3/8" = 1'-0"  
 DESIGN BY TD DATE 4/6/06

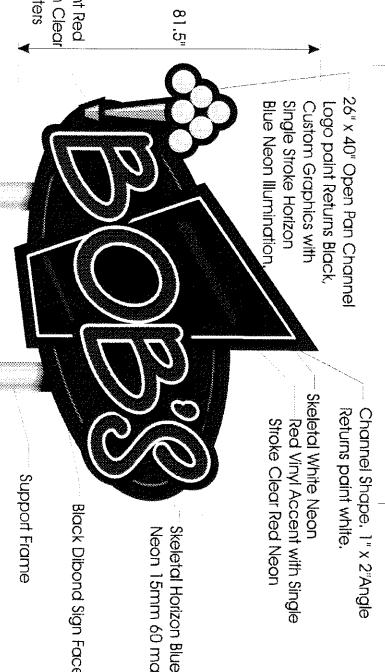
THIS ORIGINAL DESIGN(S) IS THE EXCLUSIVE PROPERTY OF THE SIGN POST  
 AND PROJECTED BY FEDERAL COPYRIGHT LAW, AN' REPRODUCTION OR  
 CONSTRUCTION OF A SIGN SIMILAR TO THE ONE ENBOUNDED HEREIN IS  
 EXPRESSLY FORBIDDEN. SHOULD SUCH CONSTRUCTION OCCUR, THE SIGN POST  
 IS DUE COMPENSATION FOR THE TIME AND EFFORT IN CREATING EACH DESIGN(S).

CUSTOMER SIGNATURE



FRONT ENTRANCE SIGN DISPLAY

24'5" High Open Pan Channel letter paint Red  
 with White Returns. Double Stroke 12mm Clear  
 Red Neon Illumination. 3" Returns on Letters

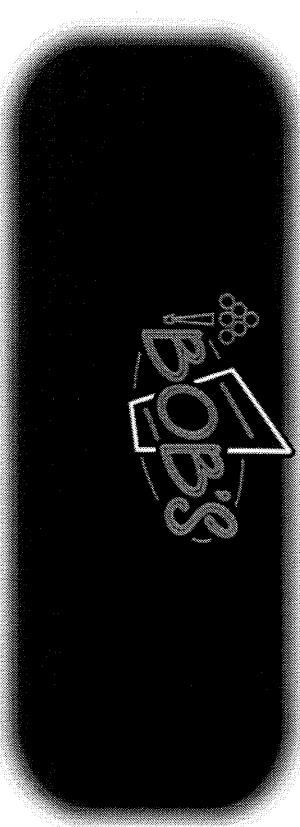


Support Frame

Black Dibond Sign Face.

Open Pan Channel Letters paint White  
 Double Tube Bright White Neon Illumination

Letters mounted on Curved Raceway



116"

Channel Shape: 1" x 2" Angle

25' x 40" Open Pan Channel

Logo Paint Returns Black

Custom Graphics with

Single Stroke Horizon

Blue Neon Illumination.

Skeletal White Neon

Red Vinyl Accent with Single

Stroke Clear Red Neon

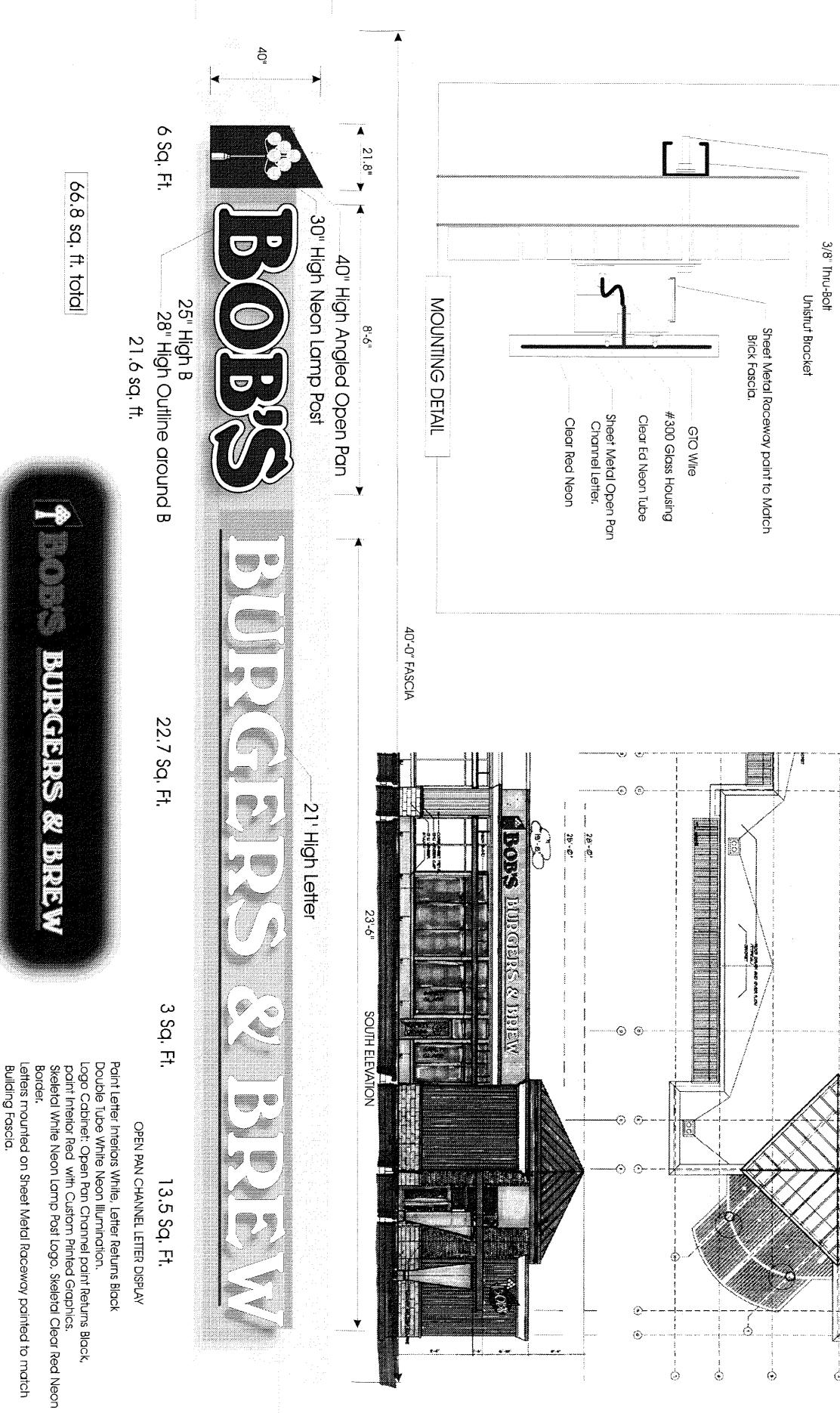
Skeletal Horizon Blue

Neon 15mm 60 ma.

Black Dibond Sign Face.



DR. TITLE BOBslip  
FILE  
SOUTHELEVATION  
CLIENT  
DESIGN STYL  
DATE 4/10/08 SCALE 3/8"=1'-0"



BOB'S  
BURGERS & BREW

THE ORIGINAL DESIGN IS THE EXCLUSIVE PROPERTY OF THE SIGN POST. ANY REPRODUCTION, TRANSMISSION, OR USE OF THIS DESIGN IS PROHIBITED. CONSTRUCTION OF SIGN SHOULD BE DONE BY A PROFESSIONAL SIGN CONTRACTOR. THE SIGN POST IS NOT RESPONSIBLE FOR THE COMPENSATION FOR THE TIME AND EFFORT INVOLVED.

Letters mounted on Sheet Metal Raceway painted to match Building Fascia.

OPEN PAN CHANNEL LETTER DISPLAY  
Point Letter: Internals White, Letter Returns Black  
Double Tube: White Neon Illumination.  
Logo Cabinet: Open Pan Channel paint Returns Black  
Point Interior: Red with Custom Printed Graphics.  
Skeletal White Neon Lamp Post Logo. Skeletal Clear Red Neon  
Border.



JOB TITLE BOB'S  
FILE Tulalip Hwy Signs  
SCALE 1"=1'-0"  
DESIGN BY IP  
DATE 12/13/06

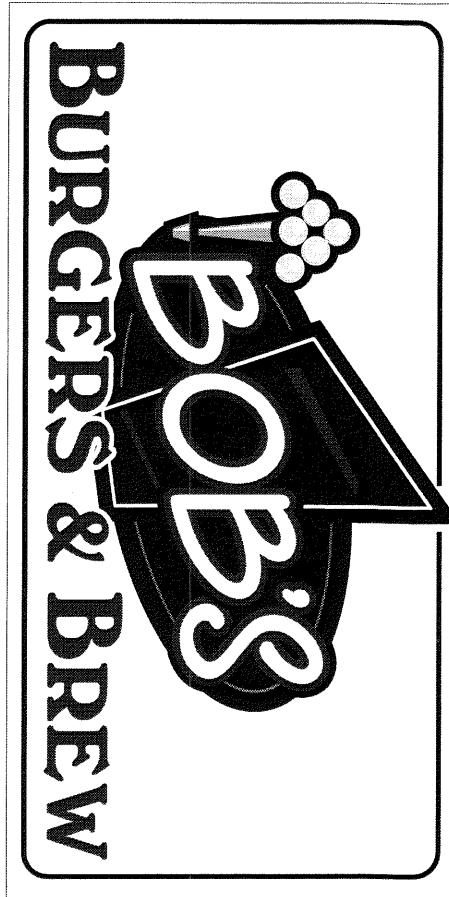
NOTE: This Color Drawing is a simulation of the colors to be used and should be verified with actual materials to be used

APPROVED AS IS

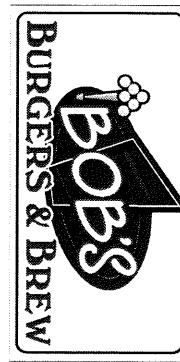
APPROVED WITH CHANGES AS MARKED

SIGNATURE

DATE



TWO 36" X 60" .063 Aluminum Reflective Signs



TWO 12" X 24" .063 Aluminum Reflective Signs

